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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1344

JOSEPH W. ALTON, JR.,

Appellant,

v.

J. MILLARD TAWES, AS GOVERNOR OF THE STATE OF MARYLAND, AND LLOYD L. SIMPKINS, AS SECRETARY OF THE STATE OF MARYLAND, ET AL.

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE

JURISDICTIONAL STATEMENT AND MOTION TO ADVANCE

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Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE

JURISDICTIONAL STATEMENT

Appellant Joseph W. Alton, Jr., a voter, taxpayer and County Executive of Anne Arundel County, Maryland, appeals from the judgment of the United States District Court for the District of Maryland that the congressional redistricting plan embodied in Chapter 371 of the Acts of the General Assembly of Maryland of 1965 is unconstitutional. The Court enjoined the submission of the measure to the voters of the State in the general election of November, 1966, where it had been referred under the referendum procedure of Article XVI Section 2 of the Maryland Constitution. The District Court further ordered that for the year 1966 and thereafter until new districts are validly estab-

lished, elections for representatives to Congress shall be held from eight congressional districts created by the Court. This statement is submitted to show that the Supreme Court of the United States has jurisdiction of the appeal, and that substantial questions are presented.

The Appellant also moves to advance the argument in this case, infra, p. 31.

Opinions Below

The opinion below has not yet been officially reported. It is set forth in Appendix A-1 hereof. Two earlier opinions of the District Court in this case dated March 21, 1964 and February 3, 1964 are reported in 228 F. Supp. 956 and 226 F. Supp. 80 and are printed here as Appendix A-2 and A-3 respectively.

Jurisdiction

The judgment of the District Court was entered on May 12, 1966 and Appellant filed his notice of appeal in the District Court on May 19, 1966. Jurisdiction of this Court to review the judgment below by direct appeal is conferred by 28 U.S.C. 1253. The following cases sustain the jurisdiction of this Court to review the judgment on appeal in this case: *Swann v. Adams*, 383 U.S. 210; *Reynolds v. Sims*, 377 U.S. 533; *Wesberry v. Sanders*, 376 U.S. 1; *Baker v. Carr*, 369 U.S. 186.

Questions Presented

1. Did the District Court err in declaring Chapter 371 of the Acts of 1965 of the General Assembly of Maryland establishing new congressional districts unconstitutional under Article I, Section 2 of the Constitution when those districts had a maximum population variance of 1 to 1.34

between the district with the least population and the district with the greatest population?

2. Assuming that Chapter 371 of the Acts of 1965 is of doubtful validity or even invalid as permanent legislation, was the District Court in error in refusing to make that Act temporarily applicable to the 1966 elections?

3. When an act of the state legislature establishing congressional districts is declared unconstitutional, does a District Court have jurisdiction or authority to create new districts and order that such new districts shall be used in forthcoming primary and general elections?

4. Assuming a District Court under certain circumstances has the authority to create new districts in a State, should the District Court in doing so accept the state legislature's political determinations as reflected in the statute and limit itself to correction of the minor population deficiencies between districts, or may the Court, as in this case, ignore those legislative determinations by creating new districts substantially different in location and character from those defined by the legislature?

Statutes Involved

Directly involved is Chapter 371 of the Acts of the General Assembly of Maryland of 1965, which is set forth in Appendix B hereof.

Statement of the Case

Proper presentation of the pertinent facts of this case suffers from two limitations, at least one of which was unavoidable. Since the Maryland General Assembly, like most state legislatures, does not print its committee hearings and reports, or the floor debates, the legislative history of state statutes drawn into question in litigation must be

gathered from such contemporaneous newspaper accounts as are available. Secondly, the hearing which preceded the action of the District Court challenged on this appeal, was more legislative than judicial in character, in that no testimony was taken, no cross examination occurred, and the documents offered by the respective parties were submitted and accepted by the Court without any rulings as to authenticity, materiality or relevance. Subject, then, to these infirmities, we believe that the material facts upon which this case must turn are as follows:

1. *Prior Procedural History of the Litigation.* When census takers started knocking on doors for the 1960 decennial census, Maryland had seven congressmen in the United States House of Representatives. When the last door bell had been rung and the results tabulated, Maryland became entitled to eight representatives pursuant to 2 U.S.C. Section 2a. A redistricting act was adopted by the Maryland General Assembly in 1961 (Chapter 206 of the Acts of the General Assembly of 1961) but was petitioned to referendum and rejected by the voters in the 1962 election. Accordingly, the State's eighth representative was elected at large in 1962 and 1964. 2 U.S.C. Section 2a(c). In 1963 the Maryland General Assembly passed a second redistricting plan[1], which likewise was petitioned to referendum. Under this Act the population difference between the most populated area and the least populated area was 365,096; the overall population variance ratio was 1 to 2.5. The pre-1960 Act was even worse in its gross mal-apportionment.

On December 20, 1963, the Maryland Citizens Committee for Fair Congressional Redistricting, Inc., et al., filed suit against J. Millard Tawes as Governor of the State of Maryland, and Lloyd Simpkins, as Secretary of the State of

[1] Chapter 380 of the 1963 Laws of Maryland.

Maryland, to have the District Court declare the pre-1960 congressional districts[2] and the 1963 districts unconstitutional. A three-judge court was convened under 28 U.S.C. 2284 and on February 3, 1964, indicated that the Plaintiffs were correct in both their contentions.[3] On February 17, 1964, the Supreme Court rendered its opinion in *Wesberry v. Sanders*, 376 U.S. 1 and the issue was settled. The Maryland General Assembly at the regular 1964 session and a special 1964 session attempted to enact a new redistricting plan but failed. Thereafter, the District Court formally declared the pre-1960 congressional districts and the districts provided for in 1963 Act unconstitutional.[4] The Court stayed the effect of its decree to permit the 1964 congressional elections to be held under the pre-1960 districting plan.

2. *The Legislature Enacts a New Congressional Redistricting Statute.* Numerous bills were introduced in the 1965 session of the Maryland General Assembly attempting to deal with the problem of redistricting.[5] After rejecting plans that would have extended the existing Baltimore City districts into the suburbs to enable Baltimore to retain its three (3) districts, that would have divided counties other than Baltimore County and that would have combined the Eastern Shore of Maryland with Southern Maryland counties, the Legislature adopted Chapter 371 of the Acts of 1965. A comparison of the districts created by the

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[2] Article 33, Sections 159-166 Annotated Code of Maryland (1956 Edition).

[3] *Maryland Citizens Committee for Fair Congressional Redistricting, Inc., et al. v. Tawes, et al.*, 226 F. Supp. 80, printed here as Appendix A. 3.

[4] *Maryland Citizens Committee for Fair Congressional Redistricting, Inc., et al. v. Tawes, et al.*, 228 F. Supp. 956, printed here as Appendix A. 2.

[5] *Washington Post*, February 4, 1965, p. D-1.

1965 legislation with the prior congressional districts is contained in Appendix C.

Immediately a Baltimore based committee began gathering signatures to petition the 1965 Law to referendum. Like their predecessors in the congressional redistricting legislative petition game, they were successful and the Act was suspended until its submission to the voters at the next general election, i.e., the 1966 elections.[6]

At the regular session of the 1966 Maryland General Assembly, the supporters of metropolitan Baltimore congressional districts introduced several measures to establish new expanded districts to enable the City to continue to have the base for three (3) congressmen. These plans were all overwhelmingly defeated. Attempts to re-enact Chapter 371 as an emergency measure, and thus not subject to referendum and attempts to modify Chapter 371 to reduce the minor population variances between several districts were all defeated by the parliamentary tactics employed by a solid block of the Baltimore City Senators and Delegates.[7] A special session of the legislature called by the Governor immediately after the regular session fared no better than the special session in 1964, due once again to the opposition of the Baltimore City bloc to any plan that did not give Baltimore three congressional districts.

~~*Proceedings in the Court Below.*~~ On April 25, 1966, the three-judge Court reconvened. During the interim between the demise of the special session of the General Assembly and the sounding of the Court's gavel, numerous intervenors joined the fray. Counsel for the Baltimore congressmen, Garmatz, Fallon and Friedel, advocated the adop-

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[6] *Baltimore Morning Sun,* June 1, 1965, p. 32; *Washington Post,* July 1, 1965.

[7] *Baltimore Morning Sun,* April 2, 1966, p. B-18 and April 6, 1966, p. C-28.

tion by the Court of a plan that would have insured the continuance of three city districts by expanding them into Baltimore County and Anne Arundel County. Their counsel emphasized to the Court the importance of preserving their districts by reason of their distinction and seniority in the House of Representatives (Tr. 52-54) (Exhs. 9, 10A and 10B). Hardwicke, a former unsuccessful candidate for Congress advanced a plan that while mathematically correct, would have created districts with no rhyme or reason save to increase the political prospects of the minority party in Maryland (Exhs. 11A, 11C). Representatives of the Negro community intervened to urge the Court to create districts that would accord Negro areas of Baltimore City more of an opportunity to elect a Negro congressman (Tr. 92).

Appellant urged the Court to sustain the legislature's 1965 congressional redistricting plan and, in the alternative, that the Court adopt a plan similar to one Appellant presented which made corrections in the minor population variances of the 1965 Act but followed basically the 1965 Act (Exhs. 14-15).

At the hearing on April 25, 1966, the Court limited argument of counsel. A plethora of documents, printed, typed and handwritten, were proferred and accepted by the Court, although they were not marked or admitted as formal exhibits. Neither the parties nor the Court called any political scientists, laymen or other witnesses. Accordingly, the record is devoid of any testimony or cross-examination, nor does it contain any evidence as to the character or bases of the legislative districts created by the District Court challenged on this appeal.

The hearing conducted by the Court was so informal that at one point the Court asked if anyone in the court-

room wished to speak and a gentleman came forward to relate, quite inexplicably, water pollution to congressional districts.

4. *The Decision of the Court Below.* The decision of the District Court on May 3, 1966 held that the 1965 congressional redistricting law was unconstitutional:

> "The enactment thus prescribes a ratio of 1 to 1.34 between the district with the least population and the district with the greatest population. In plain words, this means that a vote in the least populous district was worth about one-third more than a vote in the most populous district. The disparty is too great."
>
> ". . . in initial districting the aim should be to come as closely as possible to a one-to-one ratio. There is no showing in this case that the difference of one-third is unavoidable or justified upon any legally acceptable ground. We must therefore declare Chapter 371 of the Acts of 1965 invalid and forbid its submission in the referendum set for the fall elections of 1966" (Appendix A-2, pp. 7a and 9a).

The Court refused to adopt Chapter 371 on an interim basis for the 1966 elections "because this would offend the rule of the Supreme Court in *Swann v. Adams,* 34 U.S.L. Week 3291 (Feb. 25, 1966)."

The Court further stated that it did not doubt its power to adopt a redistricting plan under the circumstances of the case "to remain in force till the General Assembly adopts its own constitutionally valid plan" and proceeded to create its own districts.

The eight districts established by the Court are set out in Appendix A-1, pp. 11a-15a and are compared with the pre-1960 districts and the districts of the 1965 Act in Appendix D-3, p. 23a.

In order to establish mathematically correct districts (the Court's plan had a population variance of 1 to 1.026) the Court used the following announced guidelines:

1. Joining of the counties on the Eastern Shore of Maryland with counties on Western Shore bordering on the Chesapeake Bay to create "a homogeneous and compact" First District.

2. Joining of areas in the surrounding counties with Baltimore City to "recognize the existence of metropolitan communities."

3. Splitting of counties to give "dominant weight, as we think we must, to the population factor."

4. Adherence to the 1960 census figures although admittedly "not up to date".

After the decision was announced, Appellant immediately indicated this appeal would be taken. The Court summoned the parties to meet in chambers on May 12, 1966 where the form of the order was agreed upon and at the Court's request, the parties stipulated as to the "exhibits" (Tr. 164-168) for the convenience of this Court upon review because no exhibits had been formally admitted into evidence in the traditional manner at the earlier hearing.

The redistricting plan ordered into effect by the District Court created certain districts in conflict with those defined by the Legislature in its 1965 Act. Instead of adhering to the underlying legislative policies embodied in the 1965 Act of preserving the political integrity of the historic counties of the State, the Court's plan split Baltimore County four ways, Anne Arundel County three ways, and Howard County two ways. The Court not only disregarded county boundaries but it disregarded the boundaries of election districts and even precincts. Some election districts and precincts of Baltimore County were split between the Second District and the Seventh District of

Baltimore City. The voters in the Eighth Precinct of the Second Election District and Fifteenth Precinct of the First Election District of Baltimore County will cast ballots at the same polling places but in the congressional elections they must choose from separate lists of candidates determined by the location of their residence within the precincts.[8] Anne Arundel County was divided like Ancient Gaul by being split between the First District, the Third District and the Eighth District. Even councilmanic districts in Anne Arundel County were divided by precincts.

The Court ignored the legislative policy embodied in the 1965 Act providing that the First District (the Eastern Shore) should be expanded over the head of the Chesapeake Bay to include geographically contiguous areas such as Harford County and the northeastern rural areas of Baltimore County and that parts of Southern Maryland including Anne Arundel County should not be thrown across the Chesapeake Bay into the First District. The Court's redistricting plan provided not only that a substantial part of Anne Arundel County, but the counties of Calvert and St. Mary's in Southern Maryland, should be tossed across the Bay into the First District.

The General Assembly, in enacting Chapter 371, took account of the fact that under present (1966) population estimates Prince George's and Montgomery Counties each were entitled to one Congressman without any expansion of their limits. The lower court, however, disregarded this legislative judgment and proceeded to join Charles County to suburban Prince George's and to attach pieces of Howard and Anne Arundel Counties to Montgomery County in its plan.

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[8] *The News American*, May 12, 1966, p. 2B. Election districts and precincts of Baltimore County were split because the Court arbitrarily took the Beltway as its boundary line between the Second Congressional District and the Baltimore City Districts. Appendix A-1.

II

The Questions Are Substantial

It is not easy to contemplate constitutional issues more fundamental than those raised in this appeal. Their determination, one way or another, will have a definite, far reaching and long enduring impact on the nature, scope and direction of a District Court's jurisdiction and power to invalidate a statutory plan containing minor population variances and to shape its own congressional districts. The importance of the issues presented suggest that they should be authoritatively dealt with by this Court.

I.

In *Reynolds v. Sims*, 377 U.S. 533, 577, the Supreme Court interpreted the equal protection clause as requiring a State to make an honest and good faith effort to construct districts "as nearly of equal population as is practicable. We realize that it is not a practical matter to arrange legislative districts so that each one has an identical number of residents or citizens or voters. Mathematical exactness or precision is hardly a workable constitutional requirement."

It is believed that the Maryland legislature made an honest good faith and conscientious effort to comply with this admonition in enacting its 1965 redistricting Act. The underlying problem confronting the legislature was that under the pre-1960 law the First Congressional District, namely, the Eastern Shore of Maryland, had too few people and the Second Congressional District adjoining the First Congressional District had too many people[9] so that the First District necessarily had to be expanded and the Second District had to be reduced. The problem was intensified by the fact that Maryland was divided by the Chesapeake Bay, a wide estuary of the sea, and the Chesapeake Bay separated the First Congressional District from

[9] The First District had a population of 243,570 and the Second District 621,935.

the rest of the State except at its northern limits. The 1965 Act met the problem by separating Harford County from the Second District and adding it to the First District. Harford County adjoins Cecil County which historically has been a part of the northern Eastern Shore and thus a part of the First District. The 1965 Act took from the Second District the northeastern part of Baltimore County, which was geographically contiguous to Harford County and comparable in its rural character to Harford County, and added it to the First District.

The alternative, which was rejected by the Legislature, was to "leap-frog" the Chesapeake Bay and add to the First District parts of Southern Maryland, including a large part of Anne Arundel County, although Southern Maryland had a minimum of cultural, social and economic relationships with the Eastern Shore.[10]

It is submitted that the policy decision of the Legislature to solve the problem by expanding the First District upon a geographically contiguous basis over the top of the Chesapeake Bay was not an irrational, capricious or arbitrary solution. *Baker v. Carr*, 369 U.S. 186, 226.

In order to further meet the problem that the Second District had a disproportionate number of people, the 1965 Act took Carroll County away from it and added it to the Eighth District; the Act also added a few parts (Election Districts 4, 5 and 6) of Baltimore County to the Sixth District. Thus the Second District was drastically reduced from three counties, Baltimore, Harford and Carroll to one county, Baltimore County and that county was reduced in area.

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[10] Various legislative efforts at the 1966 General Session and the 1966 Special Session were made to solve the problem by including parts of Anne Arundel County and other parts of Southern Maryland in the First District but were rejected. (For example the *Lowe* Bill summarized in the *Baltimore Sun*, May 15, 1966, p. A-10.)

The legislature manifested in its 1965 Act that it was the considered legislative policy of the State to maintain the political integrity of its counties insofar as possible. Thus the integrity of each of the 23 counties was carefully preserved with the sole exception of the northeastern rural part of Baltimore County which was added to the First District and a small portion of Baltimore County which was added to the Sixth District. In adhering to this principle it may not be said that the Maryland legislature acted irrationally or in bad faith in refusing to mutilate Baltimore County more severely and in refusing to carve up other counties.

The validity of the purpose and policy of the Maryland Legislature in enacting the 1965 Act has been specifically recognized. In *Reynolds* p. 578, this Court said:

> "A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering."

Under the 1965 Act the maximum population variance from "ideal" equality of population among the districts was only 14.8 percent,[11] a ratio variance of only 1 to 1.34 between the district with the least population (the First District) and the district with the greatest population (the Second District).[12]

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[11] Population figures for all districts are contained as an appendix to the original Bill of Complaint.

[12] The average population of all districts was 387,586 under the 1965 Act. The new First District had a population of 329,826 and the new Second District a population of 443,321.

The Supreme Court has not before held such a low variation sufficient to invalidate a statutory districting plan. In *Baker v. Carr,* 369 U.S. 186, the Court held that apportionment of a State legislature upon a wholly irrational, arbitrary and capricious basis "without reference to any logic or reasonable formula whatever" (p. 194) presented a justiciable cause of action under the equal protection clause. In *Reynolds v. Sims,* 377 U.S. 533, an Alabama reapportionment plan involved a variance ratio of 41 to 1 in the State Senate and 16 to 1 in the House (p. 518). Under a later plan the variance ratio was 59 to 1 in the Senate and 4.71 to 1 in the House. Under another Act the ratio of variance was 5 to 1 in the House and 20 to 1 in the Senate (p. 550). In *Roman v. Sincock,* 377 U.S. 695 (1964) a Delaware plan involved a population variance ratio of 15 to 1 in the State Senate and 35 to 1 in the House (p. 704). Under a later Act the variance ratio for the Senate remained 15 to 1 and that for the House was reduced to 12 to 1 (p. 707). In *Westberry v. Sanders,* 376 U.S. 1, one congressional district had less than one-third the population of another (p. 2).

In almost every District Court case where statutory districting plans have been invalidated the population discrepancies have far exceeded those in the 1965 Act. In *Drum v. Seawell,* 249 F. Supp. 877 (M.D. N.C., 1965), North Carolina's districts varied from the ideal by as much as 32.9, 18.7 and 17.6 percent; the ratio of variance between the most and least populous districts was 2.3 to 1 and 1.8 to 1 and there was no explanation for the glaring discrepancies (p. 880). In *Calkins v. Hare,* 228 F. Supp. 824 (E.D. Mich., 1964) the maximum population variance ratio was 1.6 to 1 and the state could offer no rational explanation for a difference of almost 200,000 people between the largest and smallest congressional districts. In *Moore v. Moore,* 229 F. Supp. 435 (S.D. Ala., 1964), the ratio of variance

between the most populous and least populous districts was nearly 2.7 to 1. In *Park v. Faubus,* 238 F. Supp. 62 (E.D. Ark., 1965), the districts varied from the ideal by 28.84, 25.46 and 19.36 percent and the ratio of variance between the most populous and least populous districts was 1.73 to 1. In *Roberts v. Babcock,* 246 F. Supp. 396 (D. Mont., 1965), the discrepancy was 46 percent. Finally, in *Gong v. Bryant,* 230 F. Supp. 917 (S.D. Fla., 1964), districts varied from the ideal by as much as 60.03, 42.50 and 41.53 percent.

In *Moore v. Moore,* 246 F. Supp. 578 (S.D. Ala., 1965), a 14 percent variation was held valid and in *Grills v. Branigin,* 249 F. Supp. 488 (S.D. Ind., Feb. 17, 1966), a 20 percent discrepancy was sustained.[12a]

In only one case before this one, *Baker v. Clement,* 247 F. Supp. 886 (M.D. Tenn., 1965), have district variations comparable to those in the 1965 redistricting plan of the Maryland General Assembly been actually ruled unconstitutional. In that case the maximum variation from the ideal was 14.3 percent and the population variance ratio between the most and least populous district was 1.32 to 1. In that case plaintiffs had presented as alternatives to the legislative proportionment plan 2 separate redistricting plans, requiring only 1 county to be split among districts and having a variation from the ideal of only 0.86 percent. The Court found that these alternative plans demonstrated that "it is practical to arrange the counties of the state into congressional districts with 'substantial equality of population'." No such showing was made in the case at bar. Here it became clear from every plan presented and the Dis-

[12a] The House of Representatives has adopted a Bill, H.R. 5505, providing that the population of no district shall deviate by more than 15% from the average. *Moore v. Moore,* 246 F. Supp. 578, 582 (1965). The American Political Science Association has taken the position that the population of every district should be within a range of ten to fifteen percent of the average. *Wesberry v. Vandiver,* 206 F. Supp. 276, 279 (1962).

trict Court's own plan that it was impossible to achieve complete equality of population among districts without fractionalizing Baltimore County and Anne Arundel County and violating the legislative will that parts of Southern Maryland should not be thrown across the Chesapeake Bay into the First District.

It is submitted that the Maryland General Assembly has conscientiously and in good faith devised and enacted an adequate constitutional redistricting plan;[13] the District Court should have so held and adopted for the fall 1966 elections the General Assembly's own enacted plan. Such action on the part of the Court would not need to interfere with the holding of the pending referendum upon which the electorate will vote in the November 1966 elections.[14]

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[13] *Baker v. Carr*, p. 187, n. 1.

[14] Thus all the District Court needed to do to give the people of Maryland constitutional and legislatively drawn districts in the 1966 elections was to order the districts drawn by the General Assembly into effect, notwithstanding Article XVI, Section 2 of the State Constitution providing that an enactment of the General Assembly which has been petitioned to referendum may not become law until 30 days after its approval in the referendum. A State constitutional provision impeding effective vindication of voting rights was disregarded by a 3-judge District Court in the Southern District of New York, and this action was approved by the Supreme Court in *Travia v. Lomenzo*, 381 U.S. 431 (1965). The effect of the Supreme Court's ruling in that case was to endorse an order of the lower court overriding a provision of the New York Constitution which stood in the way of effectuating a court ordered reapportionment. For other cases where provisions of state constitutions were required to give way to the effective realization of federal constitutional voting rights, see *Schaefer v. Thomson*, 240 F. Supp. 249 (D. Wyo. 1964); and *Jordan v. Green* (Fla.), 173 So. 2d 448.

Actually, the District Court in the case at bar did not need to go so far. The Court was not even required to order *the suspended law*, as such, into effect in disregard of the Maryland constitutional provision permitting the petitioning of a state law to referendum. It needed only to order the *Districts* which were approved by the General Assembly into effect for the 1966 elections, leaving the State's constitutional processes intact.

The District Court declared unconstitutional the 1965 Act upon the ground that a population ratio variance of 1.34 to 1 deviated too widely from the ideal of equality (App. A-1, p. 7a). The Court did so without any consideration of the particular circumstances and whether the legislative effort embodied a rational, good faith policy free of discrimination and arbitrariness. In acting upon the basis of mathematics alone, the Court violated the teaching of the Supreme Court in *Roman v. Sincock*, 377 U.S. 695 that constitutionality of districts is not determinable by a mathematical formula. The Court said (p. 711):

> "In our view the problem does not lend itself to any such uniform formula, and it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme under the Equal Protection Clause. Rather, the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

In view of the uncertainty among the District Courts as to the application of the new constitutional principle to redistricting plans where there is no gross mal-apportionment and there is not an irrational legislative basis for population variation, it seems desirable that the Supreme Court consider such a situation and this case is an appropriate vehicle for that purpose. Clearly the constitutional issue in this context is one of major importance to the States, to the people of the States and to candidates for public office. It is of particular significance to the people of the State of Maryland.

II.

Assuming that the reapportionment plan embodied in the Act of 1965 was of marginal constitutionality and presses the outer limits of permissible variance, or was even invalid as permanent legislation, the District Court should have made that Act applicable temporarily to the 1966 Congressional elections. Any legislative act is entitled to a presumption of validity and a declaration of unconstitutionality may be made only when invalidity is so clearly apparent that the judiciary has no alternative option. Since "permissible and impermissible equality" requires a searching inquiry into all the circumstances and the legislative solution of its difficult problem was not frivolous or capricious or irrational, a wise judicial policy required the District Court to make the 1965 Act temporarily and provisionally applicable to the 1966 congressional elections.

Such a course was particularly desirable in this case because next year for the first time a legislature will be elected pursuant to a new redistricting plan substantially increasing the representation of Prince George's, Montgomery and Baltimore Counties and reducing the representation of the rural areas. As a consequence, it is likely that the 1967 legislature, constituted pursuant to a valid constitutional redistricting plan, will be able to provide the State with a congressional redistricting plan with even less of a population variance than the 1965 plan.

When a forthcoming election is imminent,[15] there was ample precedent for the District Court in the exercise of a sound discretion to direct that the forthcoming Mary-

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[15] Filing deadline for certificates of candidacy is July 5, 1966 (Art. 33, Sec. 56 Ann. Code of Md., 1957). The date of the primary elections is September 13, 1966 (Art. 33, Sec. 62, Ann. Code of Md. as amended by Chapter 784, Acts 1965).

land 1966 elections should be held under the 1965 Act. *Martin v. Bush*, 376 U.S. 222, 223 (1964). *Burns v. Richardson*, ... U.S. ....., April 25, 1966; *Tombs v. Fortson*, U.S. L. Week May 17, 1966, p. 3339. In *Reynolds v. Sims*, p. 581, the Court explicitly recognized that, when an impending election is imminent, a Court may withhold effective relief in a legislative apportionment case, even though the existing apportionment scheme is invalid. District Courts have held that the public interest may be best served if congressional elections are held even under a clearly unconstitutional reapportionment statute. *Baker v. Clement*, 247 F. Supp. 886 (M.D. Tenn. 1965); cf. however *Swann v. Adams*, 383 U.S. 210.

Indeed in this very case the District Court in 1964 declared the pre-1960 congressional districting law unconstitutional but permitted the 1964 congressional elections to take place under that Act although the population discrepancies were gross and indefensible.[16] Then the Court said "In the exercise of our discretion we conclude that the spirit of the constitution and the Supreme Court's decision in *Wesberry v. Sanders*, 376 U.S. 1 and *Martin v. Bush*, 376 U.S. 222 will be best observed by permitting 1964 elections to be held under the present statute." 228 F.Supp. 956, 958. What the District Court did in 1964 and what it did in 1966 when dealing with an Act, which was not clearly invidious, seems contradictory if not irreconcilable.

If it be claimed that the District Court acted within its discretion in refusing to make the redistrictng plan of the legislature contained in the 1965 Act applicable to the 1966 congressional elections, we wish to point out that "discretion" is as nebulous as "fairness" or "in the public interest"

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[16] There the variance in population was 1 to 2.9 with a difference of 467, 475 between the largest and smallest districts.

or "justice" itself. Chief Justice Holt once said "discretionary" was "but a softer word for arbitrary." *Walcott's Case* 90 Eng. Rep. 1275 (1793). Here the action of the District Court was plainly arbitrary, improvident and not in the public interest.

III.

The court below acted upon the assumption that, after finding the statute unconstitutional, the court had power to create new congressional districts. Its ruling raises important constitutional and statutory issues on which the lower federal courts are divided and which this Court has never squarely determined. Prior to *Wesberry v. Sanders*, the precedents may fairly be read to argue against the existence of a judicial power to redistrict. *Smiley v. Holm*, 285 U.S. 355, 374; *Carroll v. Becker*, 285 U.S. 380; see also, *Saunders v. Wilkins*, 152 F. 2d 235 (C.C.A. 4, 1945), cert. den. 328 U.S. 870.

Although the controlling statute, 2 U.S.C. 2a(c), is not clear, it reasonably implies that, when existing districts no longer are valid as a result of having been declared unconstitutional, it must follow, "unless and until new districts are created [that] all representatives allotted to the State must be elected by the State at large." *Smiley v. Holm*, p. 374. Legislation which would clearly establish a district court's jurisdiction to redistrict and eliminate at large elections has not been enacted, although a bill to that end was passed by the House of Representatives last year. H. Rep. No. 140, 89th Cong., 1st Sess. (1965), p. 3.

The requirement that congressional candidates run at large is no radical innovation. At large elections were required in all States during the first 50 years of our government. All congressional candidates are elected at large today in Alabama, Alaska, Delaware, Hawaii, Nebraska, New

Mexico, Vermont and Wyoming. Connecticut, Maryland, Michigan, Ohio and Texas each now elects one congressman at large.

We believe that the alleged disadvantages of candidates running at large have been considerably exaggerated.[17] When a legislature fails to meet the constitutional problem by enacting a valid redistricting plan, a sanction to be effective — to pressure the legislature to fulfill its legislative duty — should have some unpleasant consequences. If it is unpleasant or even obnoxious for candidates to be required to run at large, this very fact is the best assurance that the legislature will meet its constitutional responsibility. Thus sound judicial policy may make even an obnoxious sanction desirable.

A clear conflict among the lower court decisions,[18] including the decision from which this appeal is taken, exists

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[17] In the November 1964 elections to the Illinois House of Representatives all members were elected at large. Although there were 236 candidates for 177 seats, the anticipated confusion did not materialize. *Illinois' At-Large Vote,* James H. Andrews, National Civic Review, May 1966, p. 253.

[18] In the wake of *Wesberry v. Sanders,* three federal courts, including the court below, and one state court, have assumed the power to redistrict rather than permit at large elections under 2 U.S.C. 2a(c). *Roberts v. Babcock,* 246 F. Supp. 396 (D. Mont., 1965); *Klahr v. Goddard,* 250 F. Supp. 537 (D. Ariz., 1965); and *People ex rel., Scott v. Kerner,* 33 Ill. 2d 460, 211 N.E. 2d 736 (1965). One other federal court, while postponing decision on the question, announced that it would "regretfully" effect a temporary redistricting when confronted by an unconstitutional redistricting statute. *Drum v. Sewell,* 249 F. Supp. 877, 881 (D.N.C., 1965), aff'd, *sub nom. Drum v. Austin,* 16 l. ed. 298, unofficially reported in 34 U.S. Law Week 3339, April 4, 1966. On the other hand, in another post-*Wesberry* case, an Arkansas district court, after declaring a state congressional districting statute unconstitutional, concluded that candidates for Congress must run at large. *Park v. Faubus,* 238 F. Supp. 62 (E.D. Ark., 1965). The court refused "to exercise any supposed equitable or inherent authority in a matter that has been left by the framers of the Constitution to the legislatures of this state or to Congress" (p. 66).

upon an important question of federal equity jurisdiction. The reach of the separation of powers doctrine and the correct construction of 2 U.S.C. 2a(c) are both involved in the question thus presented. The heavy volume of redistricting cases which has reached the Federal courts following this Court's authoritative decision in *Wesberry v. Sanders*, demonstates that the issues raised are neither unimportant nor infrequent. Appellant respectfully suggests that the question whether the District Court had jurisdiction and authority to redistrict in this case requires plenary consideration and final disposition by this Court. If a federal court is vested with the drastic power to displace legislative political and policy determinations with those of its own selection and possesses this power despite an Act of Congress, which can be fairly construed to deny such authority, surely that conclusion is entitled to acceptance in the federal system only if and when it has been approved and articulated by this Court.

IV.

This is the first case before the Court in which a District Court has rejected the legislative and political determinations of a State legislature and proceeded to create new districts substantially different in location and character from those established by the legislature. Chapter 371 of the Acts of 1965, which received overwhelming legislative approval, clearly indicates that its basic legislative policy in drawing district lines was as follows:

1. That Baltimore City was entitled to only two congressmen and, therefore, the theory of "metropolitanism", i.e., the expansion of the three City districts by attaching to them parts of the adjoining counties, should be rejected.

2. That the political integrity of the twenty-three counties should be preserved to the fullest extent possible and only

Baltimore County, because of its large population, should be divided.

3. That the establishment of a district by combining areas on both sides of the Chesapeake Bay at the lower part of the State was unwise and undesirable.

4. That the densely populated and fast growing suburban counties of Prince George's and Montgomery were each entitled to a congressman without the addition of any other areas.

A redistricting plan, very similar to the plan pressed upon the District Court by the Baltimore City congressmen, which was substantially adopted by the District Court, was rejected by the Maryland General Assembly at its 1966 regular session as well as at a special session called at the conclusion of the regular session. *Baltimore Morning Sun*, April 2, 1966, p. B-18. Thus in this case the Court not only rejected the General Assembly's legislative determinations but adopted a plan comparable to that which the legislature had refused to adopt.

As we have explained the District Court extended the areas of three districts in Baltimore City into parts of the surrounding counties by dividing Baltimore County four ways, Howard County two ways and Anne Arundel County three ways. The 1965 legislative act did not divide Howard or Anne Arundel and its division of Baltimore County was minimal.

The First District as established by the Court comprises the Eastern Shore of Maryland with the addition of a substantial part of Southern Maryland, namely, Calvert County, Charles County and a major portion of Anne Arundel County (including the City of Annapolis) although the Eastern Shore and Southern Maryland are separated by the Chesapeake Bay, one of the largest bodies of water in

the United States. The new district created by the Court is separated by 20 miles of water at its lower boundaries. The only link between the Western and Eastern Shore within the district is a two-lane toll bridge spanning four miles of tidal waters. The District Court not only stretched its imagination but its judicial authority when it said that its new district of Southern Maryland and the Eastern Shore of Maryland was "homogenous and compact" (Appendix A-1, p. 11a).

The amended Alton Plan submitted to the District Court (Exhibits 14 & 15) demonstrated that the District Court could have issued a redistricting plan for the 1966 elections following basically that of the 1965 Act of the legislature, conforming to its policy determinations and at the same time reducing the population variance in the 1965 Act from 1 to 1.34 to only 1 to 1.22.[19] The Alton Plan would have maintained the political integrity of each of the 23 counties of the State with the sole exception of Baltimore County which would be split only 3 ways instead of the 4 ways provided for in the Court's plan. Under the Alton Plan, Anne Arundel County would not have been torn apart as was done by the District Court. Under the Alton Plan, the policy determination of the legislature that the First District, which included the Eastern Shore of Maryland, should be expanded over the head of the Chesapeake Bay by annexing to that district Harford County and the geographically adjacent northeastern rural areas of Baltimore County would have been preserved. Calvert County, Charles County and the major part of Anne Arundel County would have remained in the Fifth District and not thrown across the Bay and become an appendage of the First District. The policy determination by the legislature that Baltimore City was entitled to only two congressional districts would have been complied with.

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[19] Appendix A-1, p. 8a.

Although the District Court was urged by Appellant, the original plaintiff, the Maryland Citizens Committee for Fair Congressional Redistricting, Inc., the other individual plaintiffs and other intervenors to adopt the Alton Plan, the District Court refused to do so upon the sole ground that a population variance ratio of 1 to 1.22 was not permissible, yet there was no decision by this Court or any three-judge federal District Court in the country so holding. Ignoring all considerations except mathematics the District Court mistakenly misinterpreted the decisions of this Court by holding in effect that the equality principle required almost mathematical perfection.

In *Reynolds v. Sims*, the Court recognized that a State may legitimately desire to construct districts along political subdivision lines. The Court said (p. 581):

> "And a State may legitimately desire to construct districts along political subdivision lines to deter possibilities of gerrymandering."

This Court also observed (p. 578):

> "A State may legitimately desire to maintain the integrity of various political subdivisions insofar as possible, and provide the compact districts or contiguous territory in deciding a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivisions or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering."

The most serious vice of the action of the District Court, in acting with the freedom of choice of a legislature in promulgating its redistricting plan, was that the Court has laid itself open to the charge that it gerrymandered the State of Maryland for the purpose of preserving the incumbancies of the three Baltimore City Congressmen.

A three-judge Court in Nebraska struck down a legislative plan which the Court concluded had been created to keep members in office saying:

> "Considering the plan in its totality and the record as a whole, it is apparent that districts have been created to facilitate keeping present members in office and, except in one district, to provide boundaries that will keep the present members from having to contest with each other at the polls. When such factors enter into reapportionment, it cannot be said, using the language of *Lucas*, supra, that 'a good faith effort to establish districts substantially equal in population has been made'." *League of Nebraska Municipalities v. Marsh*, 242 F. Supp. 347, 361 (D.Neb. 1965).

Although Federal District Courts may prevent legislative bodies from gerrymandering congressional districts to assure the reelection of incumbents, only this Court can prevent a District Court from laying itself open to the same charge.

The judicial power to redistrict is such a drastic power it has been exercised in only three cases: *People ex rel. Scott v. Kerner*, 33 Ill. 2d 460; 211 N.E. 2d 736 (1965); *Roberts v. Babcock*, 246 F. Supp. 396 (D. Mont., 1965); and *Klahr v. Goddard*, 250 F. Supp. 537 (D. Ariz. 1966).

In *People v. Kerner*, after the Illinois legislature failed to pass any measure redistricting the state, State and Federal Courts jointly adopted a provisional plan. The Court stated:

> "This plan utilizes the nucleus of each congressional district . . . enlarging or decreasing it to comply with the 'one man, one vote principle', *thereby according the greatest possible effect to the 1961 legislatively devised apportionment plan which heretofore governed congressional representative elections.*" (Emphasis supplied.)

Thus the Illinois Court exercised proper judicial discretion and restraint in only making minor adjustments in the legislature's plan. Relying on *Reynolds*, the Illinois court, in recognizing county boundary lines, said:

> "Mathematical nicety is not required, and the principle of the integrity of historic political subdivisions more than justified slight deviation from the hypothetical perfectly populated district."

In *Roberts v. Babcock*, the Court drew new district lines for Montana's two congressional districts by transferring counties from one district to another. There was no recent act of the legislative branch of the state providing guidelines and the Court carefully avoiding violating the integrity of county boundary lines.

In *Klahr v. Goddard*, an Arizona congressional districting case, the District Court adopted a conference committee compromise plan of the Arizona legislature. The Court stated (p. 545):

> "The proposal was accepted by vote of the Senate. In the House it received 38 favorable votes as against 31 negative votes, 11 members of the House being recorded as not voting. We assume the absentions were due to the fact that the Legislative session was near its end and a number of members were absent. Although under the rules of the House the 38 majority was insufficient to pass the measure, the vote shows a favorable acceptance by most members of both houses and for this reason *we as a court consider it appropriate to adopt this plan for redistricting.*" (Emphasis supplied.)

The Court further stated (p. 545):

> *"Since District No. 2 is presently substantially in compliance with the constitutional requirements, we find no reason for disturbing its boundaries."* (Emphasis supplied.)

The Maryland Court did not follow the reasoning of *Kerner, Roberts* and *Klahr* by making adjustments in only

those districts of the 1965 Act which needed them. On the contrary the Court in this case ignored the 1965 Act and its policies and created congressional districts having no relationship to those of that Act.

The lack of restraint of the Maryland Court is best indicated by the very different approach in the Arkansas case, *Park v. Faubus,* 238 F. Supp. 62 (E.D. Ark., 1965), where the court refused a request to redistrict the congressional districts of the State. The Court said:

> "The better practice may be to divide the State into districts. However, the running of only four congressmen at large would not present such problems as would call upon this Court to exercise any supposed equitable or inherent authority in a matter that has been left by the framers of the Constitution to the legislatures of the states or to congress."

It is clear that there exists a conflict of decisions among the District Courts and only the Supreme Court can define clear guidelines to govern judicial discretion in redistricting cases. Mr. Justice Harlan reminds us, that: "Discretion is never without limits." *Systems Federation v. Wright,* 364 U.S. 642, 648. It is one thing for a Court to enter the "political thicket," when it absolutely must; it is quite another for it to revel in the assignment. As Mr. Justice Brennan said in *Burns v. Richardson,* 34 U.S. Law Week 4365 (April 25, 1966), "a state's freedom of choice to devise substitutes for an apportionment plan found to be unconstitutional should not be restricted beyond the clear commands of the . . . [Constitution]."

The Appellant does not dispute, indeed applauds, the historic decisions of this Court, which have assured both in congressional and state legislative elections that one man's vote is entitled to count as much as another. However, the judicial power to assure that these constitutional guarantees remain unimpaired is an awesome one to be exercised

always with the greatest restraint. As one Federal District judge has observed: "New definitions and new guidelines have put the Federal Courts into a position of unprecedented power over state legislatures. The respect that we owe to our coequals in the grand scheme of our government suggests avoiding unseemly displays of power or the flexing of our judicial muscles." *Calkins v. Hare,* 228 F. Supp. 824 (1964).

The admonition towards judicial self-restraint has not always been observed in these cases. A Vermont Federal Court went so far as to enjoin the legislature from passing legislation other than a reapportionment plan, 234 F. Supp. 191 (D. Vermont, 1964). This Court, in *Burns v. Richardson,* No. 318, decided April 25, 1966, admonished the Hawaiian Federal Court, which had directed the Hawaiian legislature to enact three separate statutes relating to reapportionment, that state action in this field "should not be restricted beyond the clear commands of the Equal Protection Clause." The lower court it is true did not direct the Maryland General Assembly to enact a statute which ignored county lines, which embraced the concept of "metropolitanism", and which preserved the encumbrancy of the three congressmen from Baltimore City. These details the Court itself attended to when it created its own congressional districts in repudiation of the congressional districts established by the legislature.

Conclusion

For the reasons stated, this Court has jurisdiction of the appeal and the questions presented are substantial. Because of the imminence of the September 1966 primary elections in Maryland, we urge that the Court set the appeal down for hearing on the merits before the end of this term, dispensing with the printing of the record. Whatever the ultimate determination of the correctness of the District

Court's action in declaring Chapter 371 of the Acts of 1965 unconstitutional, and of its conclusion that it possessed the power to create its own congressional districts, we respectfully suggest that the District Court, in ignoring the districts established by Chapter 371 and creating districts of its own choosing so palpably exceeded its power as to justify summary reversal on that issue alone. *United States v. Haley*, 358 U.S. 644; *Swann v. Adams*, 382 U.S. 210; and see Stern and Gressman, Supreme Court Practice (3rd ed., 1962), pp. 196-197. Accordingly, Appellant respectfully requests the Court to summarily reverse and remand, with instructions to the District Court that it either permit the districts established by Chapter 371 to be effective for the 1966 election or, alternatively, that it make the minimum adjustments between the congressional districts established by Chapter 371 as may be required to eliminate any unconstitutional disparity between those congressional districts.

Respectfully submitted,

BENNETT CRAIN, JR.,
County Solicitor for Anne Arundel County,
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GEORGE COCHRAN DOUB,
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Baltimore, Md. 21202

Of Counsel:
WEINBERG & GREEN,
10 Light Street,
Baltimore, Md. 21202

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ------

JOSEPH W. ALTON, JR.,

Appellant,

v.

J. MILLARD TAWES, AS GOVERNOR OF THE STATE OF MARYLAND, AND LLOYD L. SIMPKINS, AS SECRETARY OF THE STATE OF MARYLAND,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE

MOTION TO ADVANCE

Pursuant to Rule 43 of the Rules of this Court, Appellant respectfully moves the Court (1) to reduce Appellees' time to move under Rule 16(1), (2) to advance the case for argument to a day prior to the summer recess of the Court, and (3) to dispense with the printing of the record.

The reason for this application is the extraordinary public importance of this case. Congressional elections will be

held this fall and the questions raised herein should be disposed of prior to the time the state's election machinery is placed in operation.[20]

Since the only issues, those of law, are adequately presented in the opinion, pleadings and exhibits below, the printing of the record is unnecessary.

Wherefore Appellant respectfully prays that the Court grant this Motion to Advance.

Respectfully submitted,

BENNETT CRAIN, JR.,
County Solicitor for Anne Arundel County,

JOSEPH CHARLES JACOBS,
Asst. County Solicitor for Anne Arundel County,
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Of Counsel:

WEINBERG & GREEN,
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[20] Filing deadline for certificates of candidacy is July 5, 1966 (Art. 33, Sec. 56 Ann. Code of Md., 1957). The date of the primary elections is September 13, 1966 (Art. 33, Sec. 62 Ann. Code of Md. 1957 as amended by Chapter 784, Acts 1965).

APPENDIX A-1

In the United States District Court for the District of Maryland

Civil Action No. 15178

Maryland Citizens Committee for Fair Congressional Redistricting, Inc., a non-profit corporation, Roland I. Perusse, Mary W. Kaufman, and Milton F. Lunch,
Plaintiffs,

v.

J. Millard Tawes, as Governor of the State of Maryland, and Lloyd L. Simpkins, as Secretary of State of the State of Maryland,
Defendants.

DECREE

Final argument having been heard in this cause on April 25, 1966, stipulation, exhibits, memoranda and briefs of all parties having been considered, it is this 12th day of May, 1966,

ADJUDGED, ORDERED and DECREED:

1. That Chapter 371 of the Acts of the General Assembly of Maryland of 1965 is unconstitutional and invalid, and the Secretary of State is hereby enjoined from placing said measure on the ballot for submission to the voters of this State in the general election of November, 1966.

2. That the Secretary of State is ordered to conduct the primary and general elections to the Congress of the United States in the year 1966, and thereafter until new districts are validly established, from eight congressional districts, which districts shall be constituted as follows:

The First Congressional District shall consist of:

Calvert County
Caroline County
Cecil County
Dorchester County
Kent County
Queen Anne's County
St. Mary's County
Somerset County
Talbot County
Wicomico County
Worcester County
Anne Arundel County (new 5th, 6th and 7th councilmanic districts; precincts 5, 6 and 7 of the new 4th councilmanic district)

The Second Congressional District shall consist of:

Baltimore County (4th, 7th, 8th, 9th, 10th, 11th, 12th and 15th Districts)

Harford County

The Third Congressional District shall consist of:

Baltimore City:
1st Ward (all)
2nd Ward (all)
3rd Ward (all)
4th Ward (all)
5th Ward (all)
6th Ward (all)
7th Ward (all)
8th Ward (all)
21st Ward (all)
22nd Ward (all)
23rd Ward (all)
24th Ward (all)
25th Ward (precincts 3-19, inclusive)
26th Ward (precincts 1-24, inclusive)

Anne Arundel County (new 1st, 2nd and 3rd councilmanic districts)

The Fourth Congressional District shall consist of:

Baltimore City:

9th Ward (all)
10th Ward (all)
11th Ward (all)
12th Ward (all)
13th Ward (all)
14th Ward (all)
17th Ward (all)
18th Ward (all)
26th Ward (Precincts 25-45, inclusive)
27th Ward (precincts 1-85, inclusive)

Baltimore County (election district No. 14)

The Fifth Congressional District shall consist of:

Prince George's County

Charles County

The Sixth Congressional District shall consist of:

Garrett County

Allegany County

Washington County

Frederick County

Carroll County

Howard County (2nd, 3rd and 4th election districts)

Baltimore County:

(that part of election district No. 1 which lies outside of the Beltway)

(that part of election district No. 2 which lies outside the Beltway)

(election district No. 5)

(election district No. 6)

The Seventh Congressional District shall consist of: –

Baltimore City

15th Ward (all)
16th Ward (all)
19th Ward (all)
20th Ward (all)
25th Ward (precincts 1 and 2)
27th Ward (precincts 86-105, inclusive)
28th Ward (all)

Baltimore County:

1st election district, precincts 1-3, 5-15, 23-26 (on City side of Beltway)
2nd election district, precincts 1-6, 8 and 14 (on City side of Beltway)
3rd election district
13th election district

The Eighth Congressional District shall consist of:

Montgomery County

Howard County:

1st, 5th and 6th election districts

Anne Arundel County:

Precincts 1-4, inclusive, of the new 4th councilmanic district

3. That each party to this proceeding shall bear his own costs.

SIMON E. SOBELOFF, Judge,
United States Court of Appeals
for the Fourth Circuit,

ROSZEL C. THOMSEN, Chief Judge,
United States District Court for
the District of Maryland,

EDWARD S. NORTHROP, Judge,
United States District Court for
the District of Maryland.

OPINION OF COURT

(Filed May 3, 1966)

Before SOBELOFF, Circuit Judge, THOMSEN and NORTHROP, District Judges.

James H. French, of Washington, D.C., Alfred L. Scanlan, of Bethesda, Md., and Shea & Gardner, of Washington, D.C., for plaintiffs.

Thomas B. Finan, Attorney General of Maryland, and Robert F. Sweeney, Assistant Attorney General, of Baltimore, Md., for defendants.

A. Adgate Duer and Robert C. Prem, of Baltimore, Md., for Charles McC. Mathias, Jr., and Rogers C. B. Morton, intervening plaintiffs.

Hervey G. Machen, of Hyattsville, Md., pro se, intervening defendant.

Patrick F. X. McGucken, of Emmitsburg, Md., pro se, intervening plaintiff.

George Cochran Doub and Weinberg and Green, of Baltimore, Md., for Clarence D. Long, intervening plaintiff.

Paul Berman and Melvin J. Sykes, of Baltimore, Md., for George H. Fallon, Edward A. Garmatz and Samuel N. Friedel, intervening defendants.

John W. Hardwicke, of Webster, Harford Co., Md., pro se, intervening plaintiff.

Marvin H. Smith, of Denton, Md., for Republican State Central Committee, intervening plaintiff.

Walter L. Green, of Hyattsville, Md., pro se, intervening defendant.

Juanita Jackson Mitchell and Archie D. Williams, of Baltimore, Md., for Carl J. Murphy, et al., intervening plaintiffs.

Bennett Crain, Jr., County Solicitor, and Joseph Charles Jacobs, Assistant County Solicitor, of Annapolis, Md., for Joseph W. Alton, Jr., County Executive of Anne Arundel County, intervening plaintiff.

Wilbur R. Dulin, of Annapolis, Md., for Joseph N. Collison, intervening plaintiff.

SOBELOFF, Circuit Judge:

More than two years ago this three-judge District Court was convened pursuant to 28 U.S.C. §§ 2281 and 2284 to consider and act upon a complaint attacking the validity of Maryland's congressional districting law, Chap. 739, § 1, Acts 1957; Art. 33 §§ 159-166, Ann. Code of Md., 1957. After taking testimony and hearing arguments of the parties and numerous intervenors, the court decided on March 21, 1964, that the plan embodied in that Act was unconstitutional, since it did not conform to the Supreme Court's "one man, one vote" requirement. *Wesberry v. Sanders*, 376 U.S. 1 (1964). The court likewise held invalid Section 1 of Chapter 380 of the Laws of Maryland, 1963, which was then pending on referendum. We declared that it failed to meet constitutional standards, and, even if approved at the 1964 election, could not be permitted to stand.

In the course of the hearing the Attorney General of Maryland, after consultation with the Governor, advised the court that in light of the unsuccessful efforts in the preceding 1964 session of the General Assembly to achieve a constitutional redistricting law there was then no possibility of legislative action. It was suggested, however, that if the court would allow the forthcoming 1964 congressional elections to proceed on the basis of the existing law, a later session of the Legislature would provide a more favorable climate for redistricting. Accordingly, while the court declared the provisions of the 1957 Code unconstitutional, it nevertheless stayed the effective date of its decree till after the 1964 election, and retained jurisdiction of the case in order to pass on any plan that might

be enacted at a future session by the General Assembly. 228 F. Supp. 956 (D. Md. 1964).

The 1965 session passed a congressional redistricting law, Chap. 371, § 1, Acts 1965, which was, however, petitioned to referendum, for approval or disapproval by the voters in the November, 1966, election. The average population of all the districts is 387,586, one-eighth of 3,100,689, the total population of the State. However, the Second District, the largest according to that enactment, would have a population of 443,331, which is 113,505 above the smallest district, the First, which would have a population of only 329,826. The enactment thus prescribes a ratio of 1 to 1.34 between the district with the least population and the district with the greatest population. In plain words this means that a vote in the least populous district was worth about one-third more than a vote in the most populous district. The disparity is too great.

At the regular session of the General Assembly in January, 1966, the Attorney General forthrightly declared to the General Assembly his opinion that the 1965 redistricting measure may have created a disparity too great to be tolerated under the Supreme Court's requirement of equal representation, and urged the passage of a new congressional districting plan more closely conforming to the requirements of the Constitution as interpreted by the Supreme Court. Despite the valiant efforts of the Attorney General and others, the General Assembly found itself unable to agree upon a new redistricting measure. The Governor immediately called a special session of the Legislature to deal with this problem. Again, the legislators, after vigorous debate, failed to reach agreement and adjourned on April 6, 1966, without taking action.

On April 25, 1966, this court reconvened and heard argument from the parties and intervenors as to the manner in which the 1966 congressional elections should be conducted. At this hearing the Citizens Committee, which initiated the litigation, and the State of Maryland argued that the redistricting measure adopted by the 1965 General Assembly sufficiently complies with the constitutional

principles laid down by the Supreme Court and that this court should adopt that measure for the 1966 congressional election. A number of the intervenors disputed the validity of the 1965 plan. John W. Hardwicke, a member of the Maryland House of Delegates, and the three Baltimore City congressmen as a group, submitted separate alternative plans. Representative Clarence Long opposed these plans and urged the court to adopt the terms of the measure now on referendum or to order at-large congressional elections for 1966. Other intervenors denied the validity of the 1965 Act and opposed the alternative plans submitted by Hardwicke and by the Baltimore City congressmen, but agreed that the court has the power and the duty to realign the districts and to avoid the confusion of at-large elections.[1]

As above indicated, Chapter 371 of the Acts of 1965, in our opinion, deviates too widely from the constitutional norm of "one man, one vote" to be tolerated. Some departure from the ideal is of course inevitable. The equality which the Constitution commands allows, however, "only minor deviations which may occur in the recognition of rational and legitimate factors, free from the taint of arbitrariness, irrationality and discrimination. *Roman v. Sincock*, 377, U.S. 695, 710 (1964)." *Drum v. Seawell*, ... F. Supp, ... (M.D.N.C. Feb. 18, 1966), *aff'd sub nom. Drum v. Austin*, 34 U.S. L. Week 3339 (Apr. 4, 1966). There is no rational justification for one district exceeding in population the average of all the districts in the state by 14.38%, while another falls below the average by 14.90% — a gross discrepancy of one-third. See *Baker v. Clement*, 247 F. Supp. 886 (M.D. Tenn. 1965) (32% dis-

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[1] Representatives of Anne Arundel County, after the conclusion of the hearing, submitted an alternative plan of their own, which is designed to avoid the splitting of Anne Arundel County. In many of its features it adheres to the 1965 enactment of the General Assembly, although it decreases the population variance from 1 to 1.34 to 1 to 1.22.

Congressmen Morton and Mathias expressed preference for Chapter 371, or a modified version of the Hardwicke plan, and strenuously opposed at-large elections.

crepancy invalid); *Roberts v. Babcock*, 246 F. Supp. 396 (D. Mont. 1965) (46% discrepancy invalid); *Meeks v. Anderson*, 229 F. Supp. 271 (D. Kan. 1964) (44% discrepancy invalid). *Cf. Grills v. Branigan*, ... F. Supp. ..... (S.D. Ind. Feb. 17, 1966) (20% discrepancy tolerated); *Moore v. Moore*, 246 F. Supp. 578 (S.D. Ala. 1965) (14% discrepancy tolerated).

Even if a district plan initially comports with the one-to-one formula, discrepancies may be expected to arise with changing conditions. Such discrepancies are unavoidable and must be tolerated for a time, till the next census, but in initial districting the aim should be to come as closely as possible to a one-to-one ratio. There is no showing in this case that the difference of one-third is unavoidable or justified upon any legally acceptable ground. We must therefore declare Chapter 371 of the Acts of 1965 invalid and forbid its submission in the referendum set for the fall elections of 1966.

Nor can we adopt this invalid measure on an interim basis for the 1966 election of members of Congress from Maryland. We have already allowed the 1964 election to be conducted on the basis of a districting law found to be unconstitutional. Even if disposed to permit another election upon the basis of a void statute, we should not do so because this would offend the rule of the Supreme Court in *Swann v. Adams*, 34 U.S. L. Week 3291 (Feb. 25, 1966). There the Supreme Court, in a reapportionment case, summarily reversed the action of a three-judge district court in Florida in permitting as a temporary measure the use of a law held invalid. We have already exercised such tolerance in our 1964 stay order; we do not feel free to do so again.

We do not doubt the power of the court in these circumstances to adopt a redistricting plan to remain in force till the General Assembly adopts its own constitutionally valid plan. Three-judge federal courts have redistricted in at least three instances. *Klahr v. Goddard*, ... F. Supp. ..... (D. Ariz. Feb. 2, 1966); *Roberts v. Babcock*,, 246 F. Supp. 396 (D. Mont. 1965). And see *People ex rel. Scott v. Kerner*, 33 Ill. 2d 460, 211 N.E. 2d 736 (1965),

where the plan was the product of consultation between the state court and a three-judge federal court. *But cf. Park v. Faubus,* 238 F. Supp. 62 (E.D. Ark. 1965) (at-large congressional elections ordered); *Calkins v. Hare,* 228 F. Supp. 824 (E.D. Mich. 1964) (same).

The court has thoughtfully considered the respective arguments of the parties and intervenors. Their views are naturally divergent, but in exposing the deficiencies of competing views, each has been of assistance to the court and each has provided a measure of guidance toward a proper solution. Having this advantage, we have endeavored to avoid as far as possible the defects that were pointed out and to avail ourselves as far as possible of whatever is sound in any of the plans submitted. A basic goal has been to achieve the requirements of equality laid down in the Supreme Court decisions without doing unnecessary violence to the heart of existing districts, county lines, and district lines within the counties and ward lines in the city. We think that our plan makes the districts as compact as possible, and in the few cases where it was deemed necessary to split a county we have taken into account the character of the neighborhoods involved. In short, we have given dominant weight, as we think we must, to the population factor, without sacrificing other relevant considerations. In our plan the maximum deviation from the ideal of equality is only 5,624 (1.4%) over the average, in the Second District, and 4,349 (1.1%) below the average, in the Fourth District, so that the maximum deviation in the weight of a vote is only in the ratio of 1 to 1.026.

A difficulty encountered by anyone who undertakes in 1966 to draw district lines with a view to achieving substantial population equality, is that the only accurate figures available are those from the 1960 census. The dilemma presents two possible choices: to accept the 1960 census figures which are not up to date, or to attempt to make estimates of changes in population figures since that date. Neither choice is a happy one, but we have concluded that it is better to adhere to the census figures than to engage in speculative estimates or projections

which vary widely with the estimators and the manner in which they handle the figures available to them from various sources. The alternative we have rejected would indeed lead into a mathematical thicket. See *Klahr v. Goddard,* ..... F. Supp. ..... (D. Ariz. Feb. 2, 1966).

Chapter 371, now on referendum, gives the First District a spread from the lower tip of the Eastern Shore, north through Cecil, Harford and part of Baltimore County. Despite this great expanse of territory, the district so devised is still 14.9% below the average for the Maryland districts. The plan we adopt terminates the First District at the Cecil-Harford boundary, keeping Harford in the Second District, where it has been. Instead, we include in the First District the Western Shore counties bordering on the Chesapeake Bay, St. Mary's, Calvert and the southern portion of Anne Arundel County. This results in a homogeneous and compact district.

It is entirely appropriate to recognize the existence of metropolitan communities. Much of the influx into Baltimore County to the north and Anne Arundel County to the south stems from Baltimore City. The settlements in the county nearest the city consist of people quite like those living on the other side of the City's boundary lines. Present district boundaries are not sacrosanct, and may be extended into neighboring counties, if this is necessary to constitute districts of sufficient size.

The new Fifth and Eighth Districts are essentially in the metropolitan Washington area.

The populations of the several districts are computed according to the 1960 census data, as follows:

The First Congressional District shall consist of:

Calvert	15,826
Caroline	19,462
Cecil	48,408
Dorchester	29,666
Kent	15,481
Queen Anne's	16,569
St. Mary's	38,915
Somerset	19,623

Talbot		21,578
Wicomico		49,050
Worcester		23,733
Anne Arundel (new 5th, 6th and 7th councilmanic districts; precincts 5, 6 and 7 of the new 4th councilmanic district)		89,215
		387,526

The Second Congressional District shall consist of:

Baltimore County (4th, 7th, 8th, 9th, 10th, 11th, 12th and 15th Districts)		316,488
Harford		76,722
		393,210

The Third Congressional District shall consist of:

Baltimore City:		
1st Ward (all)	21,185	
2d Ward (all)	10,401	
3d Ward (all)	7,610	
4th Ward (all)	7,966	
5th Ward (all)	8,703	
6th Ward (all)	20,645	
7th Ward (all)	24,749	
8th Ward (all)	47,610	
21st Ward (all)	13,955	
22d Ward (all)	6,475	
23d Ward (all)	10,159	
24th Ward (all)	14,803	
25th Ward (precincts 3-19, inclusive)	51,535	
26th Ward (precincts 1-24, inclusive)	48,801	
		294,597
Anne Arundel County (new 1st, 2d and 3d councilmanic districts)	90,600	90,600
		385,197

The Fourth Congressional District shall consist of:

Baltimore City:		
9th Ward (all)	44,612	
10th Ward (all)	16,604	
11th Ward (all)	11,546	
12th Ward (all)	34,984	
13th Ward (all)	37,788	
14th Ward (all)	22,240	
17th Ward (all)	13,287	
18th Ward (all)	15,462	
26th Ward (precincts 25-45, inclusive)	37,835	
27th Ward (precincts 1-85, inclusive)	121,137	
		355,495
Baltimore County (election district #14)	27,742	27,742
		383,237

The Fifth Congressional District shall consist of:

Prince George's	357,395
Charles	32,572
	389,967

The Sixth Congressional District shall consist of:

Garrett	20,420	
Allegany	84,169	
Washington	91,219	
Frederick	71,930	
Carroll	52,785	
Howard (2d, 3d and 4th election districts)	15,605	
		336,128

Baltimore:		
(that part of election district #1 which lies outside the Beltway)	26,991	
(that part of election district #2 which lies outside the Beltway)	19,694	
(election district #5)	2,551	
(election district #6)	1,627	
		50,863
		386,991

The Seventh Congressional District shall consist of:

Baltimore City:		
15th Ward (all)	78,635	
16th Ward (all)	51,779	
19th Ward (all)	20,477	
20th Ward (all)	46,224	
25th Ward (precincts 1 and 2)	11,976	
27th Ward (precincts 86-105, inclusive)	45,146	
28th Ward (all)	34,695	
		288,932
Baltimore County:		
1st election district, precincts 1-3, 5-15, 23-26 (on City side of Beltway)	26,818	
2d election district, precincts 1-6, 8 and 14 (on City side of Beltway)	7,810	
3d election district	26,999	
13th election district	35,708	
		97,335
		386,267

The Eighth Congressional District shall consist of:

Montgomery	340,928
Howard:	
1st, 5th and 6th election districts	20,547
Anne Arundel:	
Precincts 1-4, inclusive, of the new 4th councilmanic district	26,819
	388,294

The court expresses its appreciation to all who have cooperated in the presentation of data and argument, and especially to Dr. Carolyn (Mrs. William C.) Battle, a volunteer worker of the League of Women Voters, who assisted the court in various computations. The Attorney General is requested to prepare an appropriate decree.

APPENDIX A-2

JUDGMENT

This duly constituted court, having jurisdiction of the parties and of the subject matter of this cause, and having heard the parties, as well as numerous intervenors, does this 21st day of March, 1964, adjudge and decree:

1. That Sections 159-166 of Article 33 of the Annotated Code of Maryland (1957) are hereby declared null and void, as violative of Section 2 of Article I of the Constitution of the United States and of the Fourteenth Amendment thereto, and defendants are hereby enjoined from the use of said sections in any primary or general election of representatives to the Congress of the United States, but the effectiveness of this paragraph of the Judgment is hereby stayed until after the 1964 general election;

2. That Section 1 of Chapter 380 of the Laws of Maryland of 1963, purporting to redistrict the State of Maryland into eight congressional districts, is declared null and void and in violation of Section 2 of Article I of the Constitution

of the United States and the Fourteenth Amendment thereto, and the defendants are enjoined from placing said legislation on the ballot of the November election of 1964; and

3. That this court retains jurisdiction to grant such further relief as circumstances may warrant.

/s/ SIMON E. SOBELOFF,
Chief Judge,
United States Court of Appeals for the Fourth Circuit.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
United States District Court for the District of Maryland.

/s/ EDWARD S. NORTHROP,
United States District Judge.

OPINION OF COURT

(Filed March 21, 1964)

Before SOBELOFF, Chief Circuit Judge, THOMSEN, Chief Judge, and NORTHROP, District Judge.

PER CURIAM:

Legal questions apart, no court, federal or state, will accept with any degree of satisfaction a call to redistrict the state for congressional elections — a task primarily legislative in character. With similar reluctance will a court contemplate a proposal to order elections at large, with the consequent lessening of direct contacts between representatives and their constituents, and other disadvantages which have been often pointed out and need not be detailed here.

Heretofore we have indicated our view that both the existing districting law and the measure pending on referendum are unconstitutional, and that relief in some form is due. A formal decree was withheld to allow an opportunity for the General Assembly to take appropriate action consistent with constitutional requirements.

The legislative session in progress at the time of our earlier hearing in this case found it impossible or inexpedient to take such action. A special session convened soon thereafter also failed to bring the congressional districts into conformity with constitutional requirements as interpreted by the Supreme Court of the United States, although one house did pass a redistricting bill.

Manifestly, the existing situation cannot be permitted to continue indefinitely; but in determining the precise form that relief should take the court is permitted — indeed it is expected — to take into account all pertinent equitable considerations.

After weighing the diverse points of view that have been called to our attention and argued to us by the numerous parties and counsel, this court is of the opinion that it would be unwise to undertake at this time a solution governing the future without differentiating between the forthcoming election of November 1964 and later elections. In the exercise of our discretion, we conclude that the spirit of the Constitution and the Supreme Court's decisions in *Wesberry v. Sanders,* ..... U.S. ....., and *Martin v. Bush,* ..... U.S. ....., will be best observed by permitting the 1964 elections to be held under the present statute. Art. 33, §§159-166, Ann. Code of Md., 1957. The enactment now pending on referendum, sec. 1 of Chap. 380 of the Laws of Maryland, 1963, fails to meet constitutional standards, and even if approved at the 1964 election, could not be permitted to stand.

We will therefore sign a decree declaring the existing congressional boundaries unconstitutional and void, but will stay the effective date of the decree until after this fall's elections.

The court retains jurisdiction to grant such further relief as future developments may warrant.

/s/ SIMON E. SOBELOFF,
Chief Judge,
Fourth Circuit.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
District Court.

/s/ EDWARD S. NORTHROP,
U.S. District Judge.

APPENDIX A-3

MEMORANDUM BY THE COURT

(Filed February 3, 1964)

We are of the opinion that the court has jurisdiction of the subject matter and of the parties and that the individual plaintiffs have standing to raise the issues which this case presents.

We also think that the defendants are proper parties, that the Boards of Election Supervisors of the various political subdivisions of the State are not indispensable parties, and that a decree against the present defendants would be effective without joining the election boards.

In our view the burden rests initially on the plaintiffs to show unconstitutionality, but when the mathematical imbalance between districts is of sufficient magnitude the burden shifts to the defendants to justify the disparity. Where the vote of a citizen in one district counts for significantly less than a vote in another district, as is manifestly now the case in Maryland, the disproportion rebuts the presumption of the constitutionality of the statute and requires the State to show that there is a rational basis for the disproportion. Moreover, the measure now under referendum appears to be subject to the same objections as the present law.

No justification for the existing imbalance is shown in the pleadings before us. While on those pleadings a decree

of invalidation may be in order, we think that further opportunity, if sought, should perhaps be afforded to show justification, if there is any.

Careful consideration has been given to the arguments advanced to us last week by the plaintiffs with respect to their lack of success in past efforts to obtain legislative relief. Consideration has likewise been given to the statement of the Attorney General submitting the Governor's opinion that there is little likelihood of timely and effective corrective action at the forthcoming session.

According to the decisions of the Court of Appeals of Maryland, the pendency on referendum of an earlier redistricting statute would seem to interpose no obstacle to further legislation on the subject at this time. E.g., *First Continental S. & L. Ass'n, Etc.*, 229 Md. 293, 183 A. 2d 347 (1962).

It is in order to make one further observation: Legislative delay in facing the problem until a future special session is not free from the danger of serious complications, as the Attorney General has well pointed out. The lapse of time may serve only to intensify practical difficulties in making arrangements for the forthcoming elections. These difficulties should be clearly envisioned before accepting inaction as the only course, for it may make state-wide congressional elections inevitable — a prospect which all concerned have deplored.

The court will not pass any decree or order today but retains jurisdiction for future action on request of any party, or on its own initiative, at such time as may appear appropriate.

/s/ SIMON E. SOBELOFF,
Chief Judge,
Fourth Circuit Court
of Appeals.

/s/ ROSZEL C. THOMSEN,
Chief Judge,
District Court.

/s/ EDWARD S. NORTHROP,
District Judge.

APPENDIX B

CHAPTER 371 OF THE ACTS OF THE GENERAL ASSEMBLY OF MARYLAND OF 1965

AN ACT to repeal Sections 159 to 166A, inclusive, of Article 33 of the Annotated Code of Maryland (1957 Edition and 1964 Supplement), title "Elections," subtitle "House of Representatives," and to enact in lieu thereof new Sections 159 to 166A, inclusive, to stand in the place of the sections so repealed, revising the several congressional districts in this State for the election of representatives in the Congress of the United States, creating a new Eighth Congressional District, and relating generally to the boundaries of the several Congressional Districts in this State and to the election of representatives to fill these offices.

SECTION 1. *Be it enacted by the General Assembly of Maryland*, That Sections 159 to 166A, inclusive, of Article 33 of the Annotated Code of Maryland (1957 Edition and 1964 Supplement), title "Elections," subtitle "House of Representatives," be and they are hereby repealed, and that new Sections 159 to 166A, inclusive, be and they are hereby enacted in lieu thereof, to stand in the place of the sections so repealed, and all to read as follows:

159. The State of Maryland is divided into eight districts for the choosing of eight Representatives in the House of Representatives of the Congress of the United States. The Districts are numbered respectively from one to eight, and each is entitled to choose one Representative in the House of Representatives. All references in this subtitle to election districts and wards are to the boundaries of such election districts and wards as they were on January 1, 1965.

160. The First Congressional District is composed of the counties of Caroline, Cecil, Dorchester, Harford, Kent, Queen Anne's, Somerset, Talbot, Wicomico and Worcester, and those portions of Baltimore County within the boundaries of election districts 6, 7, and 10.

161. The Second Congressional District is composed of all of Baltimore County except those portions of Baltimore County within election districts 4, 5, 6, 7, 8, and 10.

162. The Third Congressional District is composed of those portions of Baltimore City within wards 1, 2, 3, 5, 6, 7, 8, 9, 10, 12 and 26, and precincts 1 through 77, inclusive, of ward 27.

163. The Fourth Congressional District is composed of Prince George's County.

164. The Fifth Congressional District is composed of the counties of Anne Arundel, Calvert, Charles, Howard and St. Mary's and of that portion of Baltimore City within the 25th ward.

165. The Sixth Congressional District is composed of the counties of Allegany, Carroll, Frederick, Garrett and Washington; and of those portions of Baltimore County within election districts 4, 5, and 8.

166. The Seventh Congressional District is composed of those portions of Baltimore City within wards 4, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, precincts 78 through 105, inclusive, of ward 27, and ward 28.

166A. The Eighth Congressional District is composed of Montgomery County.

SEC. 2. *And be it further enacted,* that nothing in this Act shall be construed or applied to affect the seven Congressional Districts of Maryland as now existing, on the effective date of this Act, or the tenure of the several representatives from these seven Districts and of the representative-at-large. The changes in the several Congressional Districts are to be effective for the primary and general elections scheduled in the year 1966 and thereafter the Districts here described are to be the Congressional Districts of Maryland at the time the several representatives elected in 1966 qualify and take office.

SEC. 3. *And be it further enacted,* That this Act shall take effect June 1, 1965.

Approved April 8, 1965.

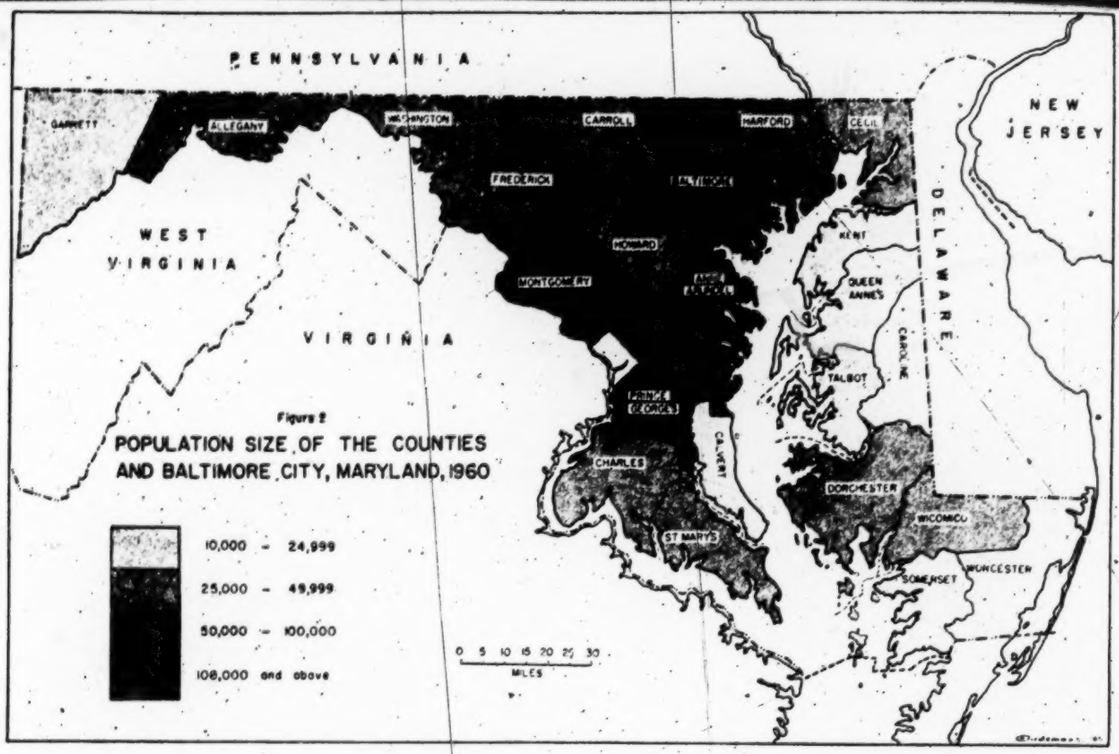
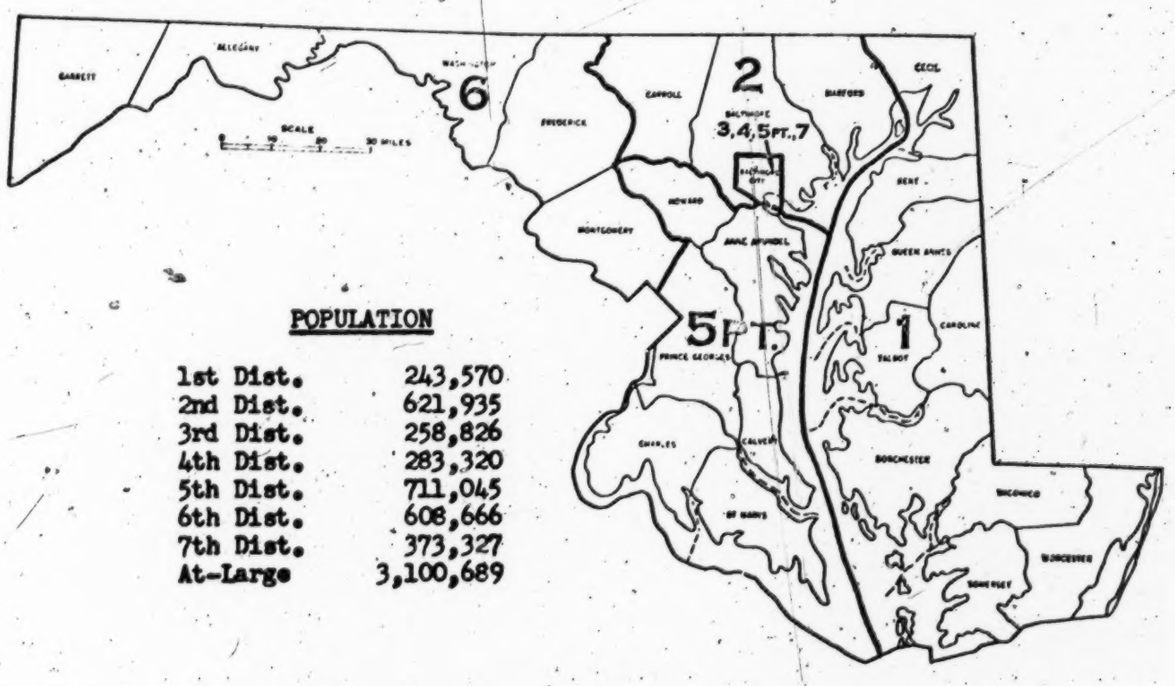


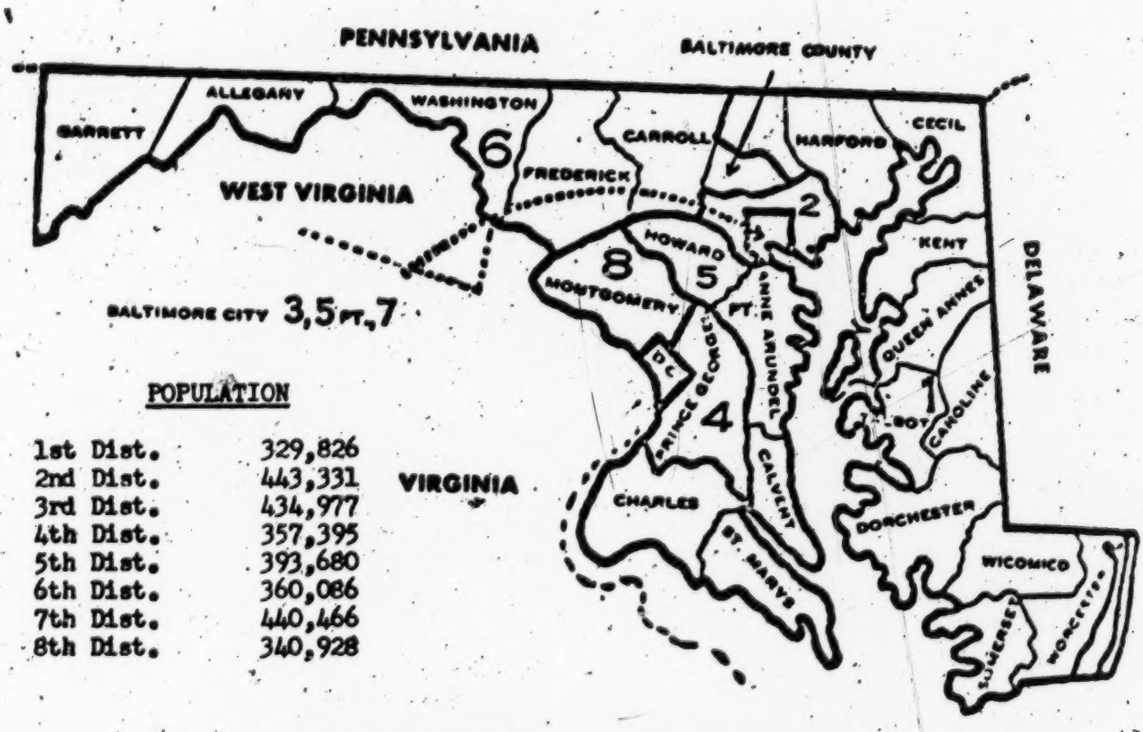
Figure 2
POPULATION SIZE OF THE COUNTIES AND BALTIMORE CITY, MARYLAND, 1960



POPULATION

1st Dist.	243,570
2nd Dist.	621,935
3rd Dist.	258,826
4th Dist.	283,320
5th Dist.	711,045
6th Dist.	608,666
7th Dist.	373,327
At-Large	3,100,689

MARYLAND'S PRE-1960 CONGRESSIONAL DISTRICTS



POPULATION

1st Dist.	329,826
2nd Dist.	443,331
3rd Dist.	434,977
4th Dist.	357,395
5th Dist.	393,680
6th Dist.	360,086
7th Dist.	440,466
8th Dist.	340,928

Maryland's Congressional Districts Established by Chapter 371 of the Acts of the General Assembly of 1965

APPENDIX C

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APPENDIX D

Comparison of Congressional Districts

	Pre-1960	Chapter 371	Court Plan
1st District	Eastern Shore (Worcester, Wicomico, Somerset, Dorchester, Talbot, Caroline, Queen Anne's, Kent and Cecil)	Eastern Shore and Harford and NE part of Baltimore County.	Eastern Shore and Calvert, St. Mary's and part of Anne Arundel County.
2nd District	Harford, Baltimore and Carroll Counties.	Parts of Baltimore County.	Part of Baltimore County and Harford County.
3rd District	Part of Baltimore City.	Part of Baltimore City.	Southern part of Baltimore City and northern part of Anne Arundel County.
4th District	Part of Baltimore City.	Prince George's County.	NE part of Baltimore City and part of Baltimore County.
5th District	Anne Arundel, Prince George's, Calvert, Charles and St. Mary's Counties and southern most ward in Baltimore City.	Anne Arundel, Calvert, Charles, St. Mary's and Howard Counties and southern most ward in Baltimore City.	Prince George's and Charles Counties.
6th District	Garrett, Allegany, Washington, Frederick and Montgomery Counties.	Garrett, Allegany, Washington, Frederick, Carroll and the western part of Baltimore County.	Garrett, Allegany, Washington, Frederick, Carroll, part of Howard and part of Baltimore County.
7th District	Part of Baltimore City.	Part of Baltimore City.	NW part of Baltimore City and part of Baltimore County.
8th District	At-Large.	Montgomery County.	Montgomery, part of Howard and part of Anne Arundel County.

END